

Helpful Tips for Lawyers and Witnesses

(Prepared by Junior members of the Mock Trial Club and modified by Mr. Stephens to fit our trial.)

Section 1 - For Lawyers

OPENING STATEMENT:

1. Create an image
 - a. dramatic, sheds some light on the story
 - b. imagery
 - c. should evoke gut emotional reaction from jury (use visceral images)
 - i. ex: image of Grendel tearing off a man's head
2. Establish your theme
 - a. ex: "Life does have meaning." (if you are arguing against the beliefs of the Dragon)
3. Introductions
 - a. introduce yourself, your colleagues (the other attorney/s)
 - b. say who you represent (Dragon and Grendel OR Hrothgar, Beowulf, etc.) and why you are here (which side you are trying to prove)
4. Burden of proof (explain what you are attempting to prove)
 - a. state your burden
 - b. promise jury you will meet your burden
5. Witnesses (explain what the witnesses are going to demonstrate)
 - a. strategy 1: talk about the witnesses in chronological order of the story.
 - b. strategy 2: talk about the story, fill in details about the witnesses as you go.

UNDERSTAND YOUR BURDEN OF PROOF:

Position 1 (Dragon and Grendel) is attempting to prove that: "The world and everything in it is unplanned accident, existence is meaningless; the past is irrelevant; nothing matters."

Position 2 (Hrothgar, Beowulf, etc.) is attempting to prove that: 1. The world is not an unplanned accident. 2. Existence is not meaningless. 3. The past (history) is important. 4. Everything (including personal behavior) does matter.

DIRECT EXAMINATION of WITNESSES:

The main objective is to tell the jury what happened, through the witness. This is when you will establish your side of the case.

Section 2 - For Witnesses

Witnesses:

- talk as much as you can
- make sure you understand what your side is attempting to prove (Position 1 or Position 2); see "burden of proof" above
- be likable
- establish your credibility and importance in this case
- tell your side of the story
 - you are only permitted to talk about your perspective ("I thought..." "I felt..." "I believed..." "I wanted..." etc..)
 - you are not permitted to talk about someone else's perspective ("So-and-so thought..." "So-and-so felt..." etc..)

Section 3 - For Lawyers

Examination of Witnesses:

- ask simple questions. (no compound questions)
 - break up super-long narratives (from the witness) with 'transition questions'
 - "And then what happened?" "So then what did you do?" "What happened after that?" etc..
- allow your witness to do most of the talking
- you should practice questioning YOUR witnesses IN ADVANCE
- if you practice questioning your witnesses in advance you will have an easier time telling the story in a way that best supports your case.

Cross Examination of Witnesses (questioning the witnesses of the opposing side):

- your main objective is to dispute everything the other side has said, destroying the credibility/character of the other side's witnesses

Section 4 - For Witnesses (during cross examination)

- try to evade all answers that make your side's case look flawed.
 - babble on about something vaguely related to the question, but don't answer it directly
- don't evade EVERY SINGLE QUESTION
 - this makes you look guilty of something and it will become annoying to the attorney AND the jury.
- stay likable and don't be argumentative.

Section 5 - For Lawyers (further hints for cross examining witnesses)

- ask simple questions that do not leave room for argument.
 - the best way to get the answer you want: ask about concrete indisputable FACTS.
- stay in control of the witness (this is your chance to show the jury how confident you are, in your case and in your own abilities to get the right answers from a witness)
- ask questions that point out the flaws in the other side like:
 - contradictions in what they have said
 - things that show lack of credibility
 - things that show an obvious bias towards one side
- do NOT 'verbally abuse' the witness.
 - there is a fine line between staying in control and 'badgering' the witness/being argumentative.

Section 6 - For Lawyers

CLOSING STATEMENT:

1. reminder
 - a. remind the jury of what the purpose of the case was (what your side is attempting to prove)
2. content
 - a. show how you have proved your case
 - i. tell them your arguments, and how your witnesses supported your arguments
 - b. show how the other side failed to prove their case
 - i. tell them how the opposition was unsuccessful
 1. ex: their witnesses contradicted themselves, they did not address the point "ABC" which was brought up by our witness "DEF", etc..

3. summarize

- a. sum up why your side was better than the other side
 - i. ex: we had more credible witnesses, our witnesses showed less bias than the other side, our attorneys address a larger scope of issues within the case than the other team's, etc..
- b. summarize the successes of your case
- c. remind the jury of the verdict you want them to reach.

* the closing statement is also known as the 'closing argument' because that's what it is. The closing statement is your side's last change to ARGUE which verdict is the right one. Think of it as a very short-verbal-essay. "

Section 7 - For Lawyers

OBJECTIONS:

General Objections:

- all witnesses must be given a chance to answer their question (a lawyer may not cut them off mid-answer)
- lawyers may not ask questions that have already been answered
- lawyers may not ask leading questions during direct examination
 - leading questions are questions that imply an answer WITHIN the question/ questions that can be answered by "yes" or "no"

Relevance: information that is not relevant to proving the case

- all questions/answers must be relevant to the case
 - irrelevant information is not permissible in court
- relevant information may also be banned if:
 - it is 'character evidence' --> trying to show that because a witness has a bad character (ex: committed a crime in the past), they are a bad person and therefore they committed this crime.
 - it is 'more prejudicial than probative' --> the question is only asked in an effort to make the witness look bad, and to make the jury prejudiced against him/her/it
 - it is a waste of the jury's time --> the point that the lawyer is trying to make has already been established, and the lawyer is only wasting time by trying to emphasize it.

Speculation: guessing about information they don't know

- lawyers may not ask a witness to speculate about:
 - events they were not present for
 - things they did not witness themselves
 - events they do not clearly remember
 - another person's thoughts/feelings/beliefs/etc..
 - the substantive issue of the case (guilt or innocence of the defendant)
- a witness is not allowed to testify for:
 - events they were not present for
 - things they did not witness themselves
 - events they do not clearly remember
 - another person's thoughts/feelings/beliefs/etc..
 - the substantive issue of the case (guilt or innocence of the defendant)

Hearsay: "he said..." "she said..." anything that is not the witness' own words.

- Lawyers are not allowed to ask a witness for 'hearsay evidence' in order to prove a point
 - ex: lawyer asks: "how's the weather?". person A says "person B said it was raining". <-- the lawyer cannot use person A's answer to prove it was raining, because it is hearsay